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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,040	09/28/2001	Max L. Musser	BELL-0124/01118	4570
49584	7590	11/16/2005	EXAMINER	
LEE & HAYES, PLLC 421 W. RIVERSIDE AVE. SUITE 500 SPOKANE, WA 99201			WOOD, WILLIAM H	
			ART UNIT	PAPER NUMBER
			2193	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/966,040	MUSSEY ET AL.	
	Examiner	Art Unit	
	William H. Wood	2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9,11-16 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9,11-16 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1, 2, 4-9, 11-16 and 20 are pending and have been examined.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 August 2005 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 4-9, 11-16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over **APA** (Admitted Prior Art) in view of **Northcutt et al.** (USPN 6,678,741).

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Claim 1

APA disclosed a method for automating distribution of software in a fiber optic network comprising:

(a) identifying software comprised on each of a plurality of firmware cards located in a multiplexor in the fiber optic network (*page 3, line 21 to page 4, line 1*);

(d) identifying software comprised on a firmware card located in a network unit connected to the multiplexor over a fiber optic connection (*page 3, line 21 to page 4, line 1*);

then determining whether there is another multiplexor in the fiber optic network and, if so, repeating the method for the other multiplexor (*page 3, line 21 to page 4, line 1*).

APA did not explicitly state determining whether the software comprised on the various cards located in the network unit is prescribed software version and updating it if not.

Also, **APA** did not explicitly state updating for other network units. **Northcutt** demonstrated that it was known at the time of invention to check the firmware of a second unit to synchronize/update the second unit with a first unit (figure 3, column 2, lines 36-42). Further, **Northcutt** disclosed updating additional network units (*column 8, lines 45-48*). It would have been obvious to one of ordinary skill in the art at the time of invention to implement the firmware of fiber optic system of **APA** with updating incompatible versions as found in **Northcutt's** teaching. This implementation would have been obvious because one of ordinary skill in the art would be motivated to

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provide firmware which can successfully communicate (**Northcutt**: column 1, lines 32-43).

Claim 2

APA and **Northcutt** disclosed the method of claim 1, wherein identifying the software comprised on each of the plurality of firmware cards located in the multiplexor comprises identifying a version for the software (**Northcutt**: figure 3, column 2, lines 36-42).

Claim 4

APA and **Northcutt** disclosed the method of claim 1, wherein identifying the software comprised on each of the plurality of firmware cards located in the multiplexor comprises identifying software comprised on an optical interface unit card (**APA**: page 3, line 21 to page 4, line 1; page 2, lines 17-23).

Claim 5

APA and **Northcutt** disclosed the method of claim 1, wherein identifying the software comprised on each of the plurality of firmware cards located in the multiplexor comprises identifying software comprised on an optical multiplexing unit card (**APA**: page 3, line 21 to page 4, line 1; page 2, lines 17-23).

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Claim 6

APA and **Northcutt** disclosed the method of claim 1, wherein identifying the software comprised on the firmware card located in the network unit comprises identifying software comprised on an optical interface unit card (**APA**: page 3, line 21 to page 4, line 1).

Claim 7

APA and **Northcutt** disclosed a computer readable medium having computer executable instructions stored thereon for performing the method recited in claim 1 (**Northcutt**: column 2, lines 62-63).

Claim 8

The limitations of claim 8 are substantially the same as for claim 1 and are rejected in the same manner.

Claim 9

APA and **Northcutt** disclosed the method of claim 8, wherein identifying the software comprised in the multiplexor comprises identifying the software version (**Northcutt**: figure 3, column 2, lines 36-42).

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Claim 11

APA and **Northcutt** disclosed the method of claim 8, wherein determining if the software on each network unit is compatible with the software on the multiplexor comprises determining if a software version on each network unit is compatible with a software version on the multiplexor (**Northcutt**: figure 3, column 2, lines 36-42).

Claim 12

APA and **Northcutt** disclosed the method of claim 8, wherein identifying software comprised in the multiplexor comprises determining a version of software on a firmware card in the multiplexor (**Northcutt**: figure 3, column 2, lines 36-42; **APA**: page 3, line 21 to page 4, line 1).

Claim 13

APA and **Northcutt** disclosed the method of claim 12, wherein determining the version of software on the firmware card in the multiplexor comprises determining the version of software on at least one of a optical interface unit card and an optical multiplexing unit card (**APA**: page 3, line 21 to page 4, line 1; page 2, lines 17-23).

Claim 14

APA and **Northcutt** disclosed the method of claim 8, wherein identifying the software comprised in the network unit comprises determining a version of software on a

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firmware card located on the network unit (**APA**: page 3, line 21 to page 4, line 1; page 2, lines 17-23).

Claim 15

APA and **Northcutt** disclosed the method of claim 14, wherein determining the version of software on the firmware card located on the network unit comprises determining the version of software on an optical interface unit card (**APA**: page 3, line 21 to page 4, line 1; page 2, lines 17-23).

Claim 16

APA and **Northcutt** disclosed a computer readable medium having computer executable instructions for performing the method of claim 8 (**Northcutt**: column 2, lines 62-63).

Claim 20

The limitations of claim 20 are substantially the same as for claim 1 and are rejected in the same manner.

Response to Arguments

4. Applicant's arguments with respect to claims 1, 2, 4-9, 11-16 and 20 have been considered but are moot in view of the new ground(s) of rejection. It is noted that

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Northcutt's method is organized in that it updates all necessary devices (column 8, liens 45-48).

Correspondence Information


Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Wood whose telephone number is (571)-272-3736. The examiner can normally be reached 9:00am - 5:30pm Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571)-272-3719. The fax phone numbers for the organization where this application or proceeding is assigned are (571)273-8300 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.



William H. Wood
November 10, 2005



TODD INGBERG
PRIMARY EXAMINER